Supreme Court, U. S.
FILED
AUG 15 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

NO. 78-1836

GREGORY K. LEWIN
PETITIONER,

VS.

STATE OF NEW JERSEY,
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPERIOR COURT OF NEW JERSEY,
APPELLATE DIVISION

PETITIONER'S REPLY MEMORANDUM

THOMAS EDWARD PLANT,
Attorney for Petitioner
220 Newark Avenue
Jersey City, NJ 07302
(201) 656-4200

Hudson Blueprint Co. (201) 372-5200

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

NO. 78-1836

GREGORY K. LEWIN, Petitioner

v.

STATE OF NEW JERSEY, Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

PETITIONER'S REPLY MEMORANDUM

Two of the three questions presented in Respondent's brief in opposition to the petition are arguments first raised by Respondent, thus, it is to Point I and Point II of the brief in opposition that this reply is directed.

In Point I, the argument is made that "Certiorari should be denied because of petitioner's failure to fully raise his constitutional issues in the state courts." A reading of the two page opinion in State v. Lewin 163 N.J. Super 441 (App. Div. 1978), 395 A.2d 212 (which is the subject of the

petition and is contained Appendix A thereof) reveals that the issue in the case was the New Jersey rule with respect to in-custody interrogations of motor vehicle arrestees:

> "During the police investigation at the scene and at police headquarters and before defendant was given any Miranda warnings defendant made certain statements to the police...At the criminal trial defendant's statements were admitted into evidence by the trial judge. The defendant contends that the statements were not admissible because they were not preceded by a notice or warning of his rights.
>
> In essence, the defendant urges the statements should not have been admitted against him, since to do so was in violation of his rights as laid down in Miranda..."Id., 163 N.J. Super at 441, 395 A.2d at 212.

The Appellate Division rejected Petitioner's urgings by reiterating the New Jersey rule that Miranda is inapplicable to all motor vehicle violations.

A constitutional issue was raised by the Petitioner before the New Jersey court and this Court. Respondent's argument to the contrary has no merit.

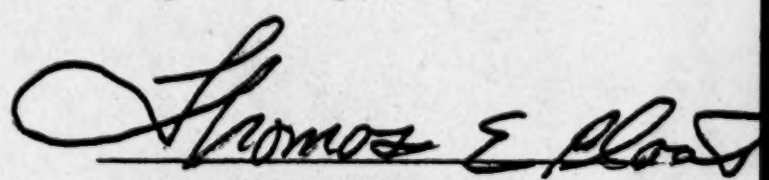
In Point II of the Respondent's brief, it is claimed that "The issue presented by

petitioner does not implicate a case or controversey within Article III, Section 2." This assertion is followed by an argument which is more akin to a claim of harmless error: "(E)ven assuming for the sake of argument that Miranda warnings are constitutionally required following arrests for motor vehicle offenses such a requirement would have no effect on the outcome of the present case." because the case involves "...two cumulative statements and no issue of taint." In a footnote, there appears a suggestion that the "result might have been different had Petitioner argued...the so called "cat out of the bag theory".

The entire argument to support the claim in Point II is gratuitious and begs the issue. The Petitioner does not object to the introduction of the second in-custody statement (tape recorded) since it was preceeded by Miranda warnings and in any event did not harm him. His objection is to the introduction of the first custodial statement which was not prefaced by Miranda warnings. This statement materially differed from the second statement tc the detrament of the Petitioner.

It should not be necessary, however, to answer the allegations made by Respondent in Point II. They amounted to harmless error arguments improperly made under the claim of an Article III, Section 2 objection. Respondent does not say that the opinion below was advisory or such an opinion is requested from this Court. Nowhere can be found an assertion that the issue at hand is hypothetical and was dealt with as such by the New Jersey Courts, or that the Petitioner lacks standing. There is in fact no explanation in Point II of why there is a lack of a justiciable case before this Court within the constraints of Article III, Section 2 of the Constitution.

Respectfully submitted.



THOMAS E. PLANT
COUNSEL FOR PETITIONER

AUGUST 6, 1979